

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

This document relates to:  
John Delahoussaye v. Bayer  
Corporation, et al.,  
No. 3:01-cv-2370

ORDER OVERRULING BAYER  
CORPORATION'S OBJECTION TO  
ORDER TO SHOW CAUSE WHY CASE  
SHOULD NOT BE REMANDED

On March 8, 2005, the court issued an order to show cause why this matter should not be remanded. Defendant Bayer Corporation ("Bayer") filed an objection, urging the court not to remand the case because plaintiff's claims against co-defendant The Delaco Company ("Delaco") are presently stayed pursuant to its Chapter 11 bankruptcy filing. Alternatively, Bayer requests that the court delay remand of the case for six months based on the burden cause by the large number of cases that have already been remanded to Louisiana. Having reviewed Bayer's objection,<sup>1</sup>

<sup>1</sup>Plaintiff did not file a response to the objection.

ORDER

1 the court hereby finds and rules as follows:

2       Delaco filed for bankruptcy protection under Chapter 11 of  
3 the Bankruptcy Code on February 12, 2004. The bankruptcy filing  
4 stayed all claims against Delaco under 11 U.S.C. § 362, including  
5 plaintiff's claim. Plaintiff allegedly suffered a stroke 5 to 7  
6 hours after taking Dexatrim, a Delaco product, and 20 to 22 hours  
7 after taking Alka-Seltzer Plus, a Bayer product. Bayer argues  
8 that Delaco is the "primary target defendant" because plaintiff  
9 ingested Delaco's product closer to the time of his stroke.  
10 Therefore, Bayer argues, judicial efficiency requires that the  
11 case should not be remanded until Delaco's bankruptcy is resolved  
12 and plaintiff can resume prosecution of his claim against the  
13 company.

14       In essence, Bayer is asking the court to extend Delaco's  
15 automatic stay to include nonbankrupt Bayer--something the court  
16 will not do. While courts have been willing to extend a debtor's  
17 automatic stay to include its nonbankrupt co-defendants, they  
18 have done so only when the co-defendants' interests were so  
19 intimately intertwined with the debtor's that the latter may be  
20 said to be the real property in interest. See, e.g., A.H. Robins  
21 Co. v. Piccinin, 788 F.2d 994, 1007 (4<sup>th</sup> Cir. 1986). Courts have  
22 decline to extend the automatic stay to unrelated co-defendants  
23 who have merely a joint tortfeasor relationship with the debtor.  
24 See, e.g., Lynch v. Johns-Manville Sales Corp., 710 F.2d 1194 (6<sup>th</sup>  
25 Cir. 1983) (bankruptcy court would not exercise its discretion to  
26 extend automatic stay so as to encompass nondebtor defendants in

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1 asbestos products liability actions; the scope of the automatic  
2 stay is narrowly focused on protection of debtor only).

3       In the alternative, Bayer urges the court to stay remand of  
4 the case in order to relieve the corporation and its counsel of  
5 the hardships and scheduling conflicts that it claims will result  
6 if the case is remanded to Louisiana. Bayer asserts that if the  
7 court remands this case, 48 total cases against Bayer will have  
8 been (or shortly will be) remanded back to federal courts in  
9 Louisiana. Bayer requests that the court delay remand in order to  
10 allow these cases to work their way through the Louisiana federal  
11 court system. In support of its request, Bayer points to the  
12 final paragraph of Case Management Order 17C ("CMO 17C") which  
13 states that the remand process is flexible and may be adjusted as  
14 needed to "lessen the burden on any participant in [the remand]  
15 process."

16       The court is not persuaded that a stay of remand is  
17 necessary. The court has set up a system for remand and both  
18 plaintiff and Bayer agree that the case is ripe for remand. While  
19 CMO 17C does allow the court to adjust the flow of remanded  
20 cases, the present record does not warrant such action. If the  
21 number of remanded cases to date has indeed placed a burden on  
22 the Louisiana federal court system, that is something for those  
23 courts to handle. If Bayer's counsel is feeling burdened by the  
24 number of remanded cases, counsel should raise the issue with the  
25 remand judge during the scheduling conference. Simply put,  
26 Bayer's assertions of undue burden are too vague to warrant a

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1 six-month delay of remand in a case where all parties agree that  
2 it is ripe for remand.

3       Based on the foregoing, the court OVERRULES Bayer's  
4 objection to the order to show cause why the case should not be  
5 remanded. The case will be included on the court's May, 2005  
6 Suggestion of Remand Order.

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8       DATED at Seattle, Washington this 9th day of May, 2005.

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11      BARBARA JACOBS ROTHSTEIN  
12      UNITED STATES DISTRICT COURT  
13      JUDGE  
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